

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

RAYMOND ALEXANDER,
Plaintiff

vs.

JIM FORR, ET AL.,
Defendants

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CIVIL ACTION NO. 3:04-0370

Chief Judge Vanaskie

ORDER

September 30, 2005

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

By Report and Recommendation (R&R) filed on July 26, 2005, Magistrate Judge Malachy E. Mannion proposed that this Court deny the pro se plaintiff's motion for partial summary judgment motion on a claim that prison officials wrongfully retaliated against Plaintiff for his exercise of allegedly First Amendment protected rights by fabricating and prosecuting misconduct charges. Magistrate Judge Mannion found that summary judgment in Plaintiff's favor on this claim was not warranted for several grounds, including the existence of evidence proffered by Defendants that retaliation was not a motivation for the charges and the adjudication of guilt. Plaintiff timely objected to the R&R, contesting each of the reasons articulated by the Magistrate Judge for recommending against summary judgment. Having carefully reviewed the matter de novo, I find that Defendants did proffer adequate evidence on the question of motivation for the misconduct charge

and adjudication to preclude summary adjudication of this issue. In this regard, the affidavits presented by some of the Defendants accused of retaliation on the claim that is the subject of Plaintiff's partial summary judgment, attesting to the fact that the same decision would have been made in the absence of the allegedly protected conduct, is enough to defeat summary judgment. In this regard, prison officials are entitled to a substantial measure of deference when it comes to matters of discipline. See Carter v. McGrady, 292 F. 3d 152, 158 (3d Cir. 2002).

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The R&R filed on July 26, 2005 (Dkt. Entry 51) is **ADOPTED**.
2. Plaintiff's motion for partial summary judgment (Dkt. Entry 25) is **DENIED**.
3. This matter is referred back to Magistrate Judge Mannion for further pretrial proceedings.

s/ Thomas I. Vanaskie
Thomas I. Vanaskie, Chief Judge
Middle District of Pennsylvania